

**STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES**

IN THE MATTER OF:

[REDACTED]

Reg. No.: 201320826
Issue No.: 1038
Case No.: [REDACTED]
Hearing Date: February 14, 2013
County: Oakland DHS (04)

ADMINISTRATIVE LAW JUDGE: Christian Gardocki

HEARING DECISION

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and MCL 400.37 following Claimant's request for a hearing. After due notice, a telephone hearing was held on February 14, 2013 from Detroit, Michigan. Participants included the above-named claimant, [REDACTED], Claimant's mother, testified and appeared as Claimant's authorized hearing representative. Participants on behalf of Department of Human Services (DHS) included [REDACTED] Manager, and [REDACTED], Specialist.

ISSUE

The issue is whether DHS properly terminated Claimant's Family Independence Program (FIP) benefit eligibility due to Claimant's noncompliance with Work Participation Program (WPP) participation.

FINDINGS OF FACT

The Administrative Law Judge, based on the competent, material, and substantial evidence on the whole record, finds as material fact:

1. Claimant was an ongoing FIP benefit recipient.
2. Claimant was not an ongoing WPP participant.
3. On 10/31/12, DHS mailed Claimant a Work Participation Program Appointment Notice (Exhibit 1) to attend WPP on 11/14/12.
4. Claimant failed to attend the WPP appointment.

5. On 11/26/12, DHS mailed Claimant a Notice of Noncompliance (Exhibit 2) scheduling Claimant for a triage appointment on 12/4/12.
6. Claimant failed to attend the triage dated 12/4/12.
7. On 11/26/12, DHS mailed Claimant a Notice of Case Action terminating Claimant's FIP benefit eligibility, effective 1/2013, due to noncompliance with WPP participation and imposition of an employment-related disqualification.
8. On 12/28/12, Claimant requested a hearing disputing the FIP benefit termination.

CONCLUSIONS OF LAW

The Family Independence Program (FIP) was established pursuant to the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Public Law 104-193, 8 USC 601, *et seq.* DHS administers the FIP pursuant to MCL 400.10, *et seq* and MAC R 400.3101-3131. DHS policies are found in the Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM) and the Reference Tables Manual (RFT).

Federal and state laws require each work eligible individual (WEI) in the FIP group to participate in the work participation program or other employment-related activity unless temporarily deferred or engaged in activities that meet participation requirements. BEM 230A (11/2012), p. 1. These clients must participate in employment and/or self-sufficiency related activities to increase their employability and obtain employment. *Id.*

As a condition of eligibility, all WEIs and non-WEIs must work or engage in employment and/or self-sufficiency-related activities. Noncompliance of applicants, recipients, or member adds means doing any of the following without good cause:

- Appear and participate with the work participation program or other employment service provider.
- Complete a Family Automated Screening Tool (FAST), as assigned as the first step in the Family Self-Sufficiency Plan (FSSP) process.
- Develop a FSSP.
- Comply with activities assigned on the FSSP.
- Provide legitimate documentation of work participation.
- Appear for a scheduled appointment or meeting related to assigned activities.
- Participate in employment and/or self-sufficiency-related activities.
- Participate in required activity.
- Accept a job referral.
- Complete a job application.
- Appear for a job interview (see the exception below).
- Stating orally or in writing a definite intent not to comply with program requirements.
- Threatening, physically abusing or otherwise behaving disruptively toward anyone conducting or participating in an employment and/ or self-sufficiency-related activity.

- Refusing employment support services if the refusal prevents participation in an employment and/or self-sufficiency-related activity.
BEM 233A (11/2012), p. 1-2

A Work Eligible Individual (WEI) and non-WEIs (except ineligible grantees, clients deferred for lack of child care, and disqualified aliens), who fail, without good cause, to participate in employment or self-sufficiency-related activities, must be penalized. *Id.* Depending on the case situation, penalties include the following: delay in eligibility at application, ineligibility (denial or termination of FIP with no minimum penalty period), case closure for a minimum period depending on the number of previous non-compliance penalties. *Id.*

The present case involves a FIP benefit termination, effective 1/2013, based on an employment disqualification against Claimant. It was not disputed that the disqualification was imposed due to Claimant's failure to attend WPP. It was not disputed that DHS mailed Claimant a notice to attend WPP orientation and that Claimant failed to attend the orientation. Claimant also failed to make any attempts to attend WPP thereafter.

Claimant contended that she did not attend the orientation because she did not receive the notice to attend WPP. The proper mailing and addressing of a letter creates a presumption of receipt. That presumption may be rebutted by evidence. *Stacey v Sankovich*, 19 Mich App 638 (1969); *Good v Detroit Automobile Inter-Insurance Exchange*, 67 Mich App 270 (1976). It was not disputed that DHS mailed the notice to attend WPP to Claimant's reported mailing address (see Exhibit 1). Claimant and her mother testified that they had difficulties receiving mail at their residence. Claimant failed to present any documentary evidence supporting the testimony. It is found that Claimant failed to rebut the presumption of proper mailing. It is found that Claimant received the notice to attend WPP. The failure by Claimant to attend WPP orientation, or any dates thereafter, is sufficient to establish a basis for noncompliance.

Claimant alleged that she has a long-term disability which prevents her participation with WPP. Once a client claims a disability he/she must provide DHS with verification of the disability when requested. *Id.* The verification must indicate that the disability will last longer than 90 calendar days. *Id.* If the verification is not returned, a disability is not established. *Id.* The client will be required to fully participate in the work participation program as a mandatory participant. *Id.* For verified disabilities over 90 days, the specialist must obtain an MRT decision by completing the medical packet. *Id.* The client must provide DHS with the required documentation such as the DHS-49 series, medical and/or educational documentation needed to define the disability. *Id.*

DHS provided testimony that Claimant was considered for a long-term disability and was denied. DHS also provided testimony that MRT restricted Claimant from performing work involving heavy machinery and heights.

An important distinction must be made. Claimant is not entitled to an administrative decision to determine whether she is disabled. Claimant is entitled to an administrative decision to determine whether she had good cause for not attending WPP.

Good cause is a valid reason for noncompliance with employment and/or self-sufficiency related activities that are based on factors that are beyond the control of the noncompliant person. BEM 233A (5/2012), p 3. Good cause includes any of the following: employment for 40 hours/week, physically or mentally unfit, illness or injury, reasonable accommodation, no child care, no transportation, illegal activities, discrimination, unplanned event or factor, long commute or eligibility for an extended FIP period. *Id*, p. 4. A claim of good cause must be verified. *Id*, p. 3.

Claimant did not specifically cite any specific barriers to attending WPP orientation on the scheduled appointment date. Thus, Claimant must establish that his conditions are so disabling that it was not reasonable to expect Claimant to make any efforts to attend WPP.

Claimant and her mother testified that Claimant suffered from a seizure disorder and that she took numerous medications. Claimant presented no medical evidence to support the testimony. Claimant testified that she previously attended WPP for three days and that she suffered seizures at WPP on all three days. Claimant testified that WPP told her to never return again. Claimant estimated that her attendance occurred in 2/2012. Claimant's testimony was credible to the extent that Claimant was probably deferred from WPP attendance for an approximate 6 month period because of the seizures, however, it was not unreasonable for DHS to require Claimant's attendance at a later point in time. It should also be noted that Claimant takes medication for the seizures and has not been determined to be disabled by Social Security Administration. The presented evidence does not amount to good cause for Claimant's failure to attend WPP.

WEIs will not be terminated from a WPP program without first scheduling a triage meeting with the client to jointly discuss noncompliance and good cause. *Id* at 7. In processing a FIP closure, DHS is required to send the client a notice of non-compliance (DHS-2444) which must include: the date of the non-compliance, the reason the client was determined to be non-compliant and the penalty duration. *Id* at 8. In addition, a triage must be held within the negative action period. *Id*. If good cause is asserted, a decision concerning good cause is made during the triage and prior to the negative action effective date. *Id*.

It should be noted that Claimant failed to attend a triage on 12/14/12. Claimant and her mother again claimed that Claimant did not receive any notice to attend due to mail problems. Just as in the above analysis of whether Claimant received notice of the WPP appointment, DHS established a proper mailing of the triage notice (see Exhibit 2) and Claimant failed to rebut the presumption.

It is found that DHS properly found Claimant to be noncompliant with WPP participation. Accordingly, the FIP benefit termination was proper.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, finds that DHS properly terminated Claimant's FIP benefit eligibility, effective 1/2013, due to noncompliance with employment-related activities by Claimant. The actions taken by DHS are AFFIRMED.


Christian Gardocki
Administrative Law Judge
for Maura Corrigan, Director
Department of Human Services

Date Signed: 2/19/2013

Date Mailed: 2/19/2013

NOTICE: Michigan Administrative Hearing System (MAHS) may order a rehearing or reconsideration on either its own motion or at the request of a party within 30 days of the mailing date of this Decision and Order. MAHS will not order a rehearing or reconsideration on the Department's motion where the final decision cannot be implemented within 90 days of the filing of the original request. (60 days for FAP cases)

The Claimant may appeal the Decision and Order to Circuit Court within 30 days of the receipt of the Decision and Order or, if a timely request for rehearing was made, within 30 days of the receipt date of the rehearing decision.

Claimant may request a rehearing or reconsideration for the following reasons:

- A rehearing **MAY** be granted if there is newly discovered evidence that could affect the outcome of the original hearing decision.
- A reconsideration **MAY** be granted for any of the following reasons:
 - misapplication of manual policy or law in the hearing decision,
 - typographical errors, mathematical error, or other obvious errors in the hearing decision that effect the substantial rights of the claimant:
 - the failure of the ALJ to address other relevant issues in the hearing decision.

Request must be submitted through the local DHS office or directly to MAHS by mail at
Michigan Administrative Hearings
Reconsideration/Rehearing Request
P. O. Box 30639
Lansing, Michigan 48909-07322

CG/hw

cc:

